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**Mechanical and Service Contractors Association of Eastern Pennsylvania, Inc.**  
**Payroll Audit – Frequently Asked Questions<sup>1</sup>**

**Which Employers are subject to a payroll audit?**

- Employers who are members of the Mechanical and Service Contractors Association of Eastern Pennsylvania, Inc.;
- Employers who have signed letters of assent with the Plumbers Local Union 690 or Steamfitters Local Union 420 (our “Partner Unions”); and
- Employers who have signed participation agreements.

**What are the ERISA Funds?**

The ERISA funds are the various multi-employer funds, which are subject to the Employee Retirement Security Act of 1974, as amended (“ERISA”), and are jointly administered by trustees appointed by the M&SCA and either of the Partner Unions, including, by way of example, pension plans, welfare plans, supplemental retirement plans, scholarship funds and apprenticeship funds.

**What contributions are Employers required to make to the ERISA Funds?**

Employer contributions to the various ERISA Funds are calculated pursuant to the applicable collective bargaining agreement between M&SCA and the Partner Unions, using the contribution rates set forth in those agreements. Please refer to the applicable collective bargaining agreement for calculating the correct contributions.

**Are Employers obligated to make contributions for paid vacation time?**

No. Although contributions are based on compensation, contributions are not expected to be made for paid vacation time as of the date of this FAQ sheet. Please refer to the applicable collective bargaining agreement for the most current information.

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<sup>1</sup>These FAQs are prepared based on the information presented in the seminar “How to Prepare for Trust Fund Audit” presented to the M&SCA by Craig Winters, CPA and Henry J. Donner, Esquire.

## **Why are audits conducted?**

The trustees of the ERISA Funds are obligated to take steps to ensure the ERISA Funds receive the contributions they are entitled, so that those contributions can be used on behalf of the participants and beneficiaries. The audit is just one tool of the trustees for ensuring the proper collection and reporting of contributions.

## **What is a payroll audit?**

Payroll audits are tests of the records of an Employer focused on compliance with ERISA Fund reporting rules and contribution obligations and may include testing for compliance with collective bargaining agreements, fund agreements, participation agreements, Rules of the ERISA Funds, and other mandates of the trustees.

## **How often are Employers audited?**

The trustees of the ERISA Funds have instituted a random payroll audit policy with the general goal that each Employer be audited at least once every five years. In addition to these random audits, the trustees of the ERISA Funds may engage accountants to perform payroll audits selected for cause.

## **What types of records will the Auditor want to see?**

The following is a general list of records that are typically requested by auditors for the most common payroll audits:

1. Documents listing weekly payroll amounts, hours information (hours worked straight time, 1.5, double time, hours paid, etc.) and other pertinent data (often referred to as payroll registers).
2. Hourly rates of pay for employees.
3. Federal tax forms 941 and 940, W-2 and W-3, and 1099-MISC and 1096.
4. State unemployment compensation returns.
5. Support for proper name of the employer and form of organization (e.g. articles of incorporation, imprint of corporate seal, name from front of tax filing/return, unincorporated business (e.g. IRS Schedule C, etc.)).
6. Names and titles of principals, officers, and owners of the Employer.
7. Alumni agreements and other agreements addressing participation in the Plans.
8. Employer's copies of monthly contribution reports to the Plans.

9. Listing of paid holidays, paid vacations, and other compensated absences and employees and dates of such compensated absences.
10. Contribution reports for other union multiemployer employee benefit plans, such as other union trades.

Employers should coordinate with the auditor to identify the documents the auditor will need and to assemble the requested documents in anticipation of the first audit meeting.

The above list is only a guideline, and not a limitation on the records needed. Additional records may be requested by auditor.

**Can an auditor demand access to payroll, tax, and other personnel records of those employees that are not participants in the subject ERISA Funds?**

Yes. The United States Supreme Court has confirmed the trustees' right to audit these types of records.

**Should an Employer make someone available to the auditor to answer questions?**

Yes. To expedite the audit process, Employer should make a knowledgeable person available to the auditor to explain the information gathered and to briefly answer questions.

**What happens after an Employer is audited?**

After a payroll audit is conducted, the auditor will review the audit findings with the Employer and provide the Employer a reasonable time to respond. The auditor will then issue a final report to the applicable ERISA Funds' trustees. Upon receipt of the auditor's report, the ERISA Fund's administrator will send a letter enclosing the auditor's findings to the Employer. In the event of an underpayment by the Employer, the administrator will demand payment of amounts found to be due by the auditor. In the event of a mistaken overpayment by the Employer, the administrator will notify the Employer of such overpayment, but it is up to the Employer to timely seek reimbursement. ERISA limits the time an Employer may recover an overpayment to six months after the determination of overpayment is made; thus, an Employer must act promptly.

**Who pays for the Audit?**

The audits are typically paid for by the ERISA Funds, but if the trustees find there is a pattern of substantial underpayment or failure to comply with the contribution obligation by an Employer, the Employer is required to pay for the cost of the payroll audit.

### **What if an Employer refuses to comply with the audit?**

In the event an Employer refuses to permit a payroll audit, or if the Employer refuses to provide the auditor access to pertinent records, the matter is referred to legal counsel, whose costs and attorneys' fees are the responsibility of the Employer.

### **Who should an Employer contact for additional information?**

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